

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE AT NASHVILLE**

DANIEL SMITH
Plaintiff

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Civil Case No. 3-11-1055

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Judge William J. Haynes, Jr.

vs.

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CHASE BANK USA, N. A.
Defendant

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STATEMENT OF MATERIAL FACTS

Comes now Plaintiff Daniel Smith (“Smith”) and submits the following Statement of Material Facts, pursuant to L. R. 56.01(b), which Smith believes there is no dispute:

1. Plaintiff Smith opened the Chase Bank USA, N. A. (“Chase”) credit card account at issue in December 2005. See Compl. ¶ 4; Def. Answer ¶ 4.

2. Smith was provided a 2005 Cardmember Agreement by Chase that contained an arbitration provision¹. See Compl. ¶ 5, Pl. Exhibit A.

3. The Cardmember Agreement that governs the parties’ relationship is the one attached to Plaintiff Smith’s complaint. See Compl. Exhibit A and Exhibit B (Daniel Smith’s Affidavit).

4. In January 2007 plaintiff received a document from Chase entitled: “IMPORTANT NOTICE OF CHANGE IN TERMS AND RIGHT TO OPT OUT”. See Compl. ¶ 6; Def. Answer ¶ 6.

¹ In Civil Case No. 03-11-1065, Chase attached a Cardmember Agreement to their Complaint (marked as Exhibit C) they allege was dated December 4, 2005. However, both agreements contain identical arbitration agreements.

5. In a letter to defendant dated February 20, 2007 plaintiff opted out of any changes to the terms of the 2005 Agreement. See Daniel Smith's Affidavit ¶ 3.
6. The account was closed to new purchases on February 27, 2007. See Def. Answer ¶ 8.
7. The account carried an outstanding balance and Plaintiff continued to make payments on the Account until on or about October 4, 2011. See Def. Answer ¶ 8.
8. Smith paid the account in full in October 2011. See Compl. ¶ 10; Def. Answer ¶ 10.
9. A dispute has arisen between the parties and the plaintiff initiated a claim with the American Arbitration Association. See Compl. ¶ 11, 12; Def. Answer ¶ 11, 12.
10. Chase has resisted arbitration. See Def. Answer ¶ 13
11. Chase never sent any subsequent Agreement(s), notice(s), or any correspondence related to removal of the Arbitration Clause nor did plaintiff agree to any changes. See Daniel Smith's Affidavit ¶ 4
12. The parties relationship is governed by the 2005 Cardmember Agreement. See Daniel Smith's Affidavit ¶ 5.
13. The Arbitration Agreement survives any alleged revision or change(s) to the 2005 Agreement. See Daniel Smith's Affidavit ¶ 6.



Respectfully submitted December 22, 2011

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CERTIFICATE OF SERVICE

This will serve to certify that a true and correct copy of **STATEMENT OF MATERIAL FACTS** has been served upon the following via US Mail on December 22, 2011:

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